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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CONSULTING ENGINEERS
SIAMAK HARANDI
DEAKIN LAUER

January 13, 1995

Regina M. Keeney, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
Washington, DC 20554

Re: Emergency Request For Clarification
or Waiver of Broadband PCS Rules

Dear Ms. Keeney:

On behalf of several individual and small business entities interested in participating in the upcoming auction for Entrepreneurs' Block C and F Broadband Personal Communications Service ("PCS") licenses, we respectfully seek emergency clarification of Sections 24.720(f) and 24.720(b) of the Commission's Rules.¹ In the alternative, we respectfully seek emergency Commission action to waive certain portions of these regulations.

Specifically, Sections 24.720(f) and (g) of the Commission's Rules contain definitions of "Gross Revenues" and "Total Assets" that must be used in determining whether a given Broadband PCS applicant either: (1) qualifies to bid on Entrepreneurs' Block Broadband PCS licenses pursuant to the \$125 million Gross Revenues/\$500 million Total Assets tests enunciated in Section 24.709(a) of the Commission's Rules;² and/or (2) qualifies as a small business Designated Entity pursuant to the definition enunciated in Section 24.720(b) of the Commission's Rules.³ In both definitions, calculations must be based on audited financial

¹47 C.F.R. §§24.720(f), (g).

²47 C.F.R. §24.709(a).

³47 C.F.R. §24.720(b).

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Page 2

statements.⁴

Our firm represents several individuals and small businesses that are interested in participating in the upcoming auction for Entrepreneurs' Block Broadband PCS licenses.⁵ These entities believe that they will qualify to bid on Entrepreneurs' Block Broadband PCS licenses and it is likely that these entities will also be eligible to bid as small business Designated Entities.

In conducting the necessary calculations to confirm these conclusions, however, several entities pointed out the extraordinary burden that the audited financial statement requirement contained in Sections 24.720(f) and (g) imposes on individuals and small businesses, who rarely have readily-available audited financial statements. In order to comply with the specific requirements of these regulations, individuals would have to retain an accountant to prepare audited financial statements before the individual can submit or participate in submission of a short-form application for Entrepreneurs' Block Broadband PCS licenses. This process is very expensive, time-consuming and particularly difficult for individuals, whose assets and revenues are not as easily identified and quantified as those of a large business concern.

Given the extremely short time frame for submission of short-form applications for Entrepreneurs' Block C licenses, the audited financial statement requirement could pose an insurmountable obstacle for many individuals and small businesses who would otherwise be interested in participating in the upcoming auction. Moreover, even if audited financial statements can be timely prepared, the substantial additional cost involved would significantly burden individual and small business applicants, as well as other applicants in which individuals or small businesses hold attributable interests or are affiliated. It should also be noted that this additional burden may prove to be unnecessary if an

⁴With respect to Gross Revenues, Section 24.720(f) requires that the relevant calculation be "evidenced by audited financial statements for the relevant number of years preceding January 1, 1994...." 47 C.F.R. §24.720(f). With respect to Total Assets, Section 24.720(g) requires that the relevant calculation be "evidenced by the most recent audited financial statements." 47 C.F.R. §24.720(g).

⁵As you know, by Public Notice issued December 23, 1994, the Commission announced that short-form applications to participate in the auction for Entrepreneurs' Block C licenses must be submitted by February 28, 1995.

Regina M. Keeney, Chief
January 13, 1995
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applicant is not the successful bidder for any Entrepreneurs' Block licenses.

Accordingly, we hereby seek clarification as to whether the audited financial statement requirement of Sections 24.720(f) and (g) of the Commission's Rules applies to all Broadband PCS applicants, attributable owners therein and affiliates thereof, or whether individuals and small businesses who do not already have audited financial statements can instead rely on financial statements certified by the applicant as accurate.

In this regard, it should be noted that the Commission has already recognized that in at least one circumstance, an applicant can rely on financial statements certified as accurate instead of audited financial statements. Specifically, "[n]ewly-formed companies should use the audited financial statements of their predecessors in interests or financial statements current as of the time their short-form application is filed that are certified by the applicant as accurate."⁶ We respectfully submit that having already carved out one exception to the audited financial statement requirement, the Commission apparently recognizes the logistical difficulties associated with audited financial statements and has demonstrated a willingness to be flexible in imposing that requirement.

It must also be emphasized that even if the Commission believes that the current regulations clearly require calculation of Gross Revenues and Total Assets based on audited financial statements, the Commission has previously waived certain Broadband PCS application requirements where such requirements were unduly burdensome and contrary to the public interest goals underlying the Commission's Rules. Specifically, in its Order, PP Docket No. 93-253, DA No. 94-1198 (October 25, 1994) (hereinafter "Order"), the Commission waived portions of Section 24.813 of its Rules to allow Broadband PCS applicants to, inter alia, avoid disclosing non-Commercial Mobile Radio Service ownership interests held by attributable stockholders.⁷

In the instant case, as demonstrated above, the audited financial statement requirement would impose a substantial burden on Broadband PCS applicants for Entrepreneurs' Block licenses. This burden is particularly heavy for individuals and small

⁶Fifth Memorandum Opinion and Order, PP Docket No. 93-253, FCC 94-285, ¶26 (November 23, 1994) (emphasis added); see also 47 C.F.R. §24.720(f).

⁷Order, ¶4.

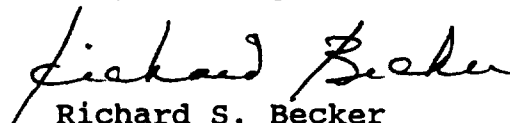
Regina M. Keeney, Chief
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businesses, who do not routinely prepare audited financial statements. In point of fact, this burden directly harms the small businessmen whose participation in Broadband PCS licensing Congress instructed the Commission to promote.⁸ Although this requirement may not be unduly burdensome for the large entities that have so far dominated bidding for PCS authorizations, this requirement is unduly burdensome for individuals and small businessmen who are the intended beneficiaries of Commission regulatory actions, such as establishment of the Entrepreneurs' Blocks and granting preferential treatment to Entrepreneurs' Block eligibles and small business Designated Entities.

Accordingly, we respectfully submit that even if the Commission believes that Sections 24.720(f) and (g) require reliance upon audited financial statements, the Commission should act pursuant to Section 24.819 of its Rules⁹ to waive that requirement to allow individuals and small businesses to rely on financial statements certified as accurate by the applicant.

In view of the impending February 28, 1995, deadline for filing of short-form applications to participate in the Entrepreneurs' Block C Broadband PCS auction, we respectfully request that you respond as quickly as possible to the instant emergency request for clarification or waiver. Of course, if you have any questions with respect to this matter, please communicate directly with this office.

Respectfully submitted,


Richard S. Becker

cc: (hand delivered)
William E. Kennard, General Counsel

⁸See 47 U.S.C. §309(j)(4)(D); Fifth Report and Order, PP Docket No. 93-253, FCC 94-178, ¶12 (July 15, 1994).

⁹47 C.F.R. §24.819.

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*audited financials
and income.*

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